Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Verizon Telephone Companies	)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16	)	
	)	

VERIZON REBUTTAL TO OPPOSITIONS TO DIRECT CASE

Of Counsel
Michael E. Glover
Edward Shakin

Ann H. Rakestraw

1515 North Court House Road
Suite 500
Arlington, VA 22201
Tel (703) 351-3174

November 19, 2002

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Telephone Companies	)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16	)	
	)	

VERIZON REBUTTAL TO OPPOSITIONS TO DIRECT CASE

Introduction and Summary

As Verizon explained in its Direct Case, the proposed tariff provisions are reasonable, just and non-discriminatory. Although some commenters have accused Verizon of implementing these provisions in order to somehow impose financial burdens on its competitors, in fact the opposite is true: the tariff provisions include alternatives to the cash security deposit option allowed by current tariffs – namely, a letter of credit or payment in advance – that are specifically designed to limit the amount of cash that customers would need to provide to ensure adequate assurance of payment. In the case of the advance payment alternative, for example, the tariff revisions would not increase the amount that customers pay out-of-pocket, but merely would change the *timing* of payments. And the tariffs provide that Verizon will pay customers large rates of interest on any security deposits that are returned. There is simply nothing to the opponents' empty claims that the tariff provisions are "anti-competitive" or unreasonably discriminatory.

Indeed, the only anti-competitive or discriminatory suggestions are the ones set forth by those *opposing* these tariff provisions. These commenters' arguments boil down to an assertion that Verizon and other ILECs should be *required* to subsidize the bad debt of their competitors. These opponents essentially want Verizon to be forced to act as a guarantor of its competitors' business plans, by requiring it to continue providing services to customers that present objective indications of inability or unwillingness to pay, without any assurance that Verizon will be paid for these services. In short, they want Verizon to fund their unsuccessful business plans and to insulate themselves from any responsibility to pay for services they order.

Moreover, the commenters that argue the most vociferously against the proposed tariff provisions either have similar provisions in their own tariffs, or have filed for bankruptcy owing Verizon millions of dollars for services that may never be paid. Yet they appear to believe that there are *no* provisions that ILECs could reasonably include in their own tariffs to protect against non-payment. In fact, they have objected to *any* attempt by *any* ILEC to modify its tariffs to obtain protection against customer bad debt, regardless of the criteria used to determine creditworthiness, or the manner in which the assurance of payment is assessed. The Commission should reject these hollow and hypocritical arguments against Verizon's and other ILECs' modest attempts to reduce the risks associated with escalating customer bad debt, and should permit the tariffs to take effect.

I. The Tariff Provisions Are Not "Anti-Competitive" or "Discriminatory," But Are Instead Designed to Give Flexible Alternatives to Customers With Financial Difficulties

Verizon's current tariffs already allow it to require a two-month security deposit if a customer fails to pay its bills or if it does not have established credit. The revisions that Verizon has proposed delineate specific, objective criteria for invoking that protection, providing added certainty for all concerned. Direct Case, at 3-5, n.4. They also provide alternatives to a cash security deposit, such as letters of credit or advance payment, which gives Verizon additional flexibility when dealing with financially troubled carriers. *Id.*, at 3-

4. They are similar to provisions already used by other carriers, and are reasonable on their own terms. *Id.,* at 9-10.

A. The Tariff Provisions Will Not Drain Cash From Customers – In Fact, They Are Specifically Designed To Give Flexible Alternatives To Cash Deposits

Commenters make alarmist claims that the proposed tariffs are in reality an attempt by Verizon to drain capital from its customers. *See* Allegiance Opp., at 5, 7; AT&T Opp., at 37. Not only are these claims baseless, but the tariffs actually were designed to do the exact opposite – namely, to provide flexibility to obtain adequate assurance of payment in ways that would minimize customers' cash outlay. For example, two of the proposed methods of adequate assurance – advance payments or letters of credit – do not involve any additional payment to Verizon at all. Letters of credit can be obtained at a fraction of the cost of a cash deposit. In the case of advance payment, customers merely would be required to pay their bills before – rather than after – they receive services. Both practices are well-established methods of providing adequate assurance of payment from customers with questionable creditworthiness.

The advance payment option is entirely consistent with commercial practices in other industries. For example, customers typically must pay rent at the beginning of the month for the apartment or office space they lease for the remainder of the month. They must pay for airline tickets in advance, before they are allowed to travel. There is nothing "anticompetitive" or "discriminatory" about requiring customers to pay in advance in such situations – it simply reflects the reality that after a customer has received a service (whether rental of a property, or travel), there is no way it can be returned if the customer does not pay. If the provider of the service is not paid, it does not have any collateral to collect upon – it simply must write off the nonpayment as a loss. When customers in those situations wish to delay paying out of pocket for such services, they can do so through other means – such as by applying for a bank loan, or paying for an airline ticket by a credit card. However, in those situations, they rely on an entity (such as a bank or credit card company) that is in the business of assessing credit risks, and that can impose limits on the amount and types of credit that are provided. For instance, those with bad credit will pay higher rates of interest and/or will be given lower amounts of credit than customers with good credit histories. The service provider is not in the position of extending credit, and should not be (and in other industries is not) required to provide unsecured lines of credit to all of its customers. If it is reasonable for entire industries to require payment in advance from all customers for all services, it certainly is reasonable for carriers to require payment in advance from customers that present objective indications that they may be unable or unwilling to pay for services rendered.

B. The Discretion Allowed In the Tariffs Benefits Customers, and Is Not "Unreasonably Discriminatory"

Some commenters claim that Verizon has adopted the tariff provisions so it could use them to "discriminate" against competitors.[1] Again, there is absolutely nothing to those hollow claims.

As an initial matter, as the Bureau has previously found, there is nothing "unreasonably discriminatory" in allowing carriers to exercise sound business judgment in determining whether to impose a deposit or advance payment requirement.[2] The Bureau has

---

1 AT&T Opp., at 35-37; ALTS Opp., at 4; Sprint Opp., at 7.

2 *See Dial Info, Inc. v. AT&T*, 61 Rad. Reg. 2d (P & F) 242, 1986 WL 291081, ¶ 13 (rel. Sept. 29, 1986) (stating Bureau could not find error in AT&T's "business determination that, given the magnitude of the potential liability for the service requested, DII's financial responsibility of record was insufficient to exempt it from" the deposit requirement).

more than once stated that the Commission is "generally disinclined to intervene" in carriers' decisions to terminate service for unpaid bills or require advance deposits, because "[s]uch determinations properly are matters within the carrier's business judgment, and, as such, ordinarily will be left undisturbed, absent a showing that the carrier acted unreasonably or unduly discriminated."[3] It is simply those same business decisions that would be at work in implementing these tariff provisions.

Moreover, any discretion that is built into the tariffs is designed to benefit *customers*, not Verizon. For example, rather than having a provision that mandated that Verizon require a security deposit or advance payment whenever one of the triggers was satisfied, the current provisions would allow Verizon to work with the customer to determine whether such assurances were needed, or if alternative arrangements could be negotiated. Such "discretion" is no broader than that Verizon is already allowed to exercise in determining whether to refuse to process applications for service, or to discontinue service altogether. Direct Case, at 25. If it is reasonable for Verizon to exercise business discretion in determining whether to discontinue service altogether, it is per se reasonable for Verizon to exercise the same discretion when deciding to undertake the *lesser* remedy of requesting adequate assurance of payment. Moreover, it is hard to believe that the alternative to "discretion" – *i.e.*, *requiring* that Verizon *must* demand a security deposit or advance payment when customers satisfy objective criteria – would be something that the carriers objecting to these tariff provisions would actually want.

---

[3] *Business Choice Network v. AT&T*, 7 FCC Rcd 7702, ¶ 3 (1992); *Affinity Network v. AT&T*, 7 FCC Rcd 7885, ¶ 3 (1992).

Some commenters argue that Verizon could have sent out more treatment or discontinuance letters under existing tariff provisions, and that it "should not be allowed the additional flexibility it seeks to require deposits, when it apparently has failed to timely utilize the measures available to it under its existing tariffs." Sprint Opp., at 15. This argument is patently absurd. These commenters – admitted customers of Verizon – are implying that they would prefer that Verizon embargo or terminate their service upon the first opportunity, rather than allowing Verizon to take less drastic measures, such as requiring a security deposit or advance payments for service. The fact that Verizon uses discretion before embargoing or terminating service does not argue *against* the current tariff provisions, but *for* them. It demonstrates that Verizon uses reasoned business judgment in deciding whether to exercise the options under existing tariffs (for embargo, termination of service, or security deposits), and would continue to do so with the revised tariff provisions.

And, indeed, as Verizon pointed out in its Direct Case, the tariffs provide concrete incentives *not* to require security deposits or advance payments unless Verizon believes such protections are warranted to protect against potential business risks. Direct Case, at 24-25. For example, the tariffs require Verizon to pay customers high rates of interest on security deposits, and those deposits must be returned to the customer if the credit risks do not materialize.[4] And there are significant administrative burdens to Verizon in calculating advance payments. Direct Case, at 24.

---

[4] Direct Case, at 24-25. Although one commenter argued that the 18.25% interest rate Verizon cited in its Direct Case was higher than other tariffs, the fact is that all tariffs provide for interest payment at rates that are well above current market rates. *See* Verizon Tariff FCC No. 1, § 2.4.1(A)(5) (9% per year, or highest rate that may be levied by law); Verizon Tariff FCC No. 11, § 2.4.1(B)(3)(b)(18.25% per year, or highest rate that may be levied by law); Verizon Tariff FCC No. 14, § 2.4.1(A) (interest "at the percentage rate

II. The Specific Criteria For Evaluating Creditworthiness Are Reasonable, and the Bureau Has Specifically Found Reasonable Another Carrier's Use of Similar Criteria to Require a Deposit

Various commenters have objected to Verizon's using any criteria other than the customer's past payment history to determine creditworthiness.[5] However, the Common Carrier Bureau found reasonable a security deposit that AT&T required of its customer, based on AT&T's assessment of a *variety* of credit history factors, not unlike those sought by Verizon and other ILECs.[6] In that case, the customer, Dial Info, Inc. ("Dial Info" or "DII") brought a complaint against AT&T when AT&T demanded a $360,000 security deposit before providing service to the customer.[7] AT&T determined that Dial Info presented a significant credit risk, based on its own investigation into the customer's credit. Specifically, AT&T stated that "its investigation revealed that DII had no significant line of credit with any other creditor, that DII was only marginally solvent, that DII did not always pay its bills on time, and those suppliers that had advanced credit did so in connection with the provision of goods in which they retained a security interest and not in connection with the provision of a service." *Id.*, ¶ 7. Accordingly, AT&T argued that, "for its protection and that if its other ratepayers, the deposit would be required under the circumstances presented before it would commit itself to providing DII such a large number of arrangements." *Id.*, ¶ 7. In particular, it also argued that, "the mere fact that DII pays most of its bills on time [to other creditors]

---

specified in the Telephone Company General and/or Local Tariff"); Verizon Tariff FCC No. 16, § 2.4.1(A) (12% per year).

5 *See* Sprint Opp., at 8; AT&T Opp., at 28; Nextel Opp., at 3-4.

6 *See Dial Info, Inc. v. AT&T*, 61 Rad. Reg. 2d (P & F) 242, 1986 WL 291081 (rel. Sept. 29, 1986).

7 The demand was pursuant to AT&T's tariff, which allowed imposition of a deposit "where the customer has a proven history of late payments or where the customer's financial responsibility is not a matter of record." *Id.*, ¶¶ 4, 13.

does not warrant a conclusion that it is entitled to significant credit from AT&T for DIAL-IT 900 service." *Id.*[8] The Bureau rejected the customer's argument that requiring the security deposit was discriminatory and unlawful, in violation of sections 201(b), 202(a), and 203 of the Act. Instead, it stated that it found nothing "unreasonable or otherwise inappropriate" in AT&T's examination of various factors regarding its customer's credit history and demanding a deposit to protect it against the risk of nonpayment for services. *Id.*, ¶ 12.[9]

Although the *Dial Info* case involved a deposit required before the customer initiated service, the logic of the *Dial Info* case applies equally to Verizon's tariff provisions. That is, if it is "reasonable" to consider various credit history factors (beyond just a customer's past payment history) *before* provisioning services to a customer, it cannot suddenly become "unreasonable" to use these same types of considerations once the customer has begun ordering services. As the *Dial Info* case affirms, while past payment history is one factor that may be relevant to a determination of a customer's credit risk, it is not the only one. Not only do the tariffs of other companies attest to this fact, but states have allowed similar tariff provisions to take effect. *See* Direct Case, at 5-6; Tariff Reply Brief, at Exhibit C. Indeed, Washington state recently amended its regulations to expand the conditions pursuant to which carriers could require security deposits from their carrier-customers. The new rule states that companies may require a deposit when the customer is "unable to demonstrate satisfactory

---

8 AT&T also pointed out that it had provided the customer "with the alternatives of posting a surety bond or a letter of credit in lieu of a cash outlay." *Id.,* ¶ 7.

9 The Bureau also noted that the amount of security deposit was appropriate, given that, due to the lag time between providing for services, billing for them, and payment, AT&T stated that "it is possible that a delinquent customer would have received service for more than thirty days before service is terminated." *Id.,* ¶¶ 13-14 & n.7.

credit," without specifying what criteria the customers must establish.[10] Washington's previous regulations had already allowed companies to require deposits if a customer did not establish satisfactory credit (through investment grade ratings, or bimonthly provision of certified financial statements showing a certain assets-to-liabilities ratio), *or* if the customer had received two or more delinquency notices in the past year.[11] However, it adopted the new rule to "allow[] for more flexibility on the part of local exchange companies" in reviewing the customer's credit history, so that they could "behave much like businesses operating in unregulated industries."[12] The Washington Commission specifically invited local exchange companies to submit revised tariffs "with their own deposit standards." *Id.*[13]

Despite commenters' attempts to introduce hypothetical problems with the specific criteria in Verizon's tariff provisions, they cannot show that the criteria are unreasonable, vague or unreasonably discriminatory. As Verizon pointed out in its Direct Case, these criteria are objectively defined, and are reasonable predictors of whether a customer will pay

---

10 *See* Washington Utilities and Transportation Commission WAC 480-120-125 (effective October 15, 2002) ("A telecommunications company may be required to pay a reasonable deposit to another telecommunications company if it is unable to demonstrate satisfactory credit."), *available at* www.wutc.wa.gov.

11 *See* Washington Utilities and Transportation Commission former regulation, WAC 480-120-057.

12 Washington Utilities and Transportation Commission, Order Repealing and Adopting Rules Permanently, Docket No. UT-990146, General Order No. R-503, ¶ 22 (Oct. 16, 2002), *available at* www.wutc.wa.gov ("WUTC Order").

13 Although these new tariff provisions would be subject to state review to determine reasonableness, the Washington Commission's order changed "prescriptive" rules regarding the deposits with "flexibility" for the company, in the first instance, to determine the appropriate standard for creditworthiness. *Id.*, ¶¶ 21-26.

its bills in the future. *See* Direct Case, at 9-11. Indeed, some commenters frankly acknowledge using the *same* criteria as part of their analysis of a customer's credit risk.[14]

For example, the use of investment-grade ratings as a criterion for a deposit or advance payments is consistent with the purpose of the ratings as predictors of a company's ability to make payments on its future debts. In particular, Verizon demonstrated a direct correlation between its own customers' below investment-grade S&P credit ratings and the percent of billable revenues outstanding 90 days or more for these customers. *See* Direct Case, at 11 & Exhibit A-11 thereto. Sprint claims that Verizon's analysis is "seriously flawed" because it excluded customers with rating below investment grade that pay their bills in a timely manner. Sprint Opp., at 8. However, this argument misinterprets the analysis that Verizon submitted. Verizon looked at *all* carrier customers in certain Verizon territories that had "*outstanding balances* above a threshold (more than $1.75 million dollars) as of a date certain in July." Direct Case, at 11 (emphasis added).[15] "Outstanding balance" includes outstanding billed amounts that are due within 30 days which are not delinquent, as well as

---

[14] AT&T states that it uses "long-term bond ratings" (*i.e.*, investment ratings) to judge a customer's creditworthiness, but states that, unlike Verizon, it uses the ratings "as one among many factors, not a bright-line test." AT&T Opp., at 38. However, while AT&T criticizes Verizon for using a "bright-line test," in comments to other carriers' tariffs, it takes the opposite approach, and criticizes using a multi-factorial test. AT&T Opp. to BellSouth Tariff, WC Docket No. 02-304, at 22 (filed Oct. 24, 2002). It is plain that AT&T's problem is not the criteria themselves, but that ILECs might be able to use some of the same provisions AT&T and other carriers already enjoy.

[15] Verizon used the $1.75 million billed-revenue threshold in order to optimize the number of carriers in the sample that are publicly rated. Generally, the smaller the amount billed to a carrier in a given period, the smaller the carrier and the less likely it is rated by a nationally recognized rating agency. The $1.75 million threshold captures approximately 96% of the billed revenue for that period and balances the number of rated carriers with the size necessary to produce a meaningful sample for the analysis.

"past due" billed amounts outstanding longer than 90 days. Thus, Verizon did not limit its analysis to only carriers who do not pay in a timely manner, as Sprint claims.

In addition, investment-grade ratings are widely used, readily accepted, and have been the basis for credit analysis for decades.[16] For example, until Washington State recently broadened its regulations regarding security deposits, one of the specific indications of whether a customer was creditworthy enough to avoid a security deposit was linked to whether it had an investment-grade credit rating.[17] The widespread acceptance of these ratings for credit evaluation attests to their reputation and usefulness as reliable predictors of credit risk. *See* Direct Case, at 9-11.

Although some commenters argue that "virtually all carriers in the industry" would have ratings are low enough to satisfy the investment-grade trigger under Verizon's proposed tariffs, AT&T Opp., at 31, this claim is unfounded. Verizon's analysis of the most recent month's billables indicates that, excluding bankrupt customers, a majority of billable revenues are from carriers with debt ratings that are investment grade or higher.[18] These include

---

[16] *See* Moody's Investors Service, Special Comment, Understanding Moody's Corporate Bond Ratings and Rating Process, at 6 (May 2002) (noting that "[i]nvestors and counterparties embed ratings as triggers into private contracts in order to protect themselves from potential deterioration in the creditworthiness of an obligor's financial position. Regulators and lawmakers utilize ratings to measure and limit risks taken by regulated entities, including capital requirements to protect bank depositors, insurance beneficiaries, and taxpayers from unnecessary costs"); Testimony of Isaac C. Hunt, Jr., SEC Commissioner, Before the Committee on Governmental Affairs, United States Senate (March 20, 2002), *available at* www.senate.gov/~gov_ affairs/032002hunt.htm ("For almost a century, credit rating agencies have been providing opinions on the creditworthiness of issuers of securities and other financial obligations").

[17] *See* Washington Utilities and Transportation Commission former regulation, WAC 480-120-057.

[18] For customers that have filed for bankruptcy protection, the bankruptcy court ultimately decides on the appropriate amount of "adequate assurance" Verizon may require. Moreover, for bankrupt customers, the investment-grade trigger would be redundant of the bankruptcy trigger.

carriers that have complained here, such as AT&T and XO. Regardless, to the extent that a significant number of carrier-customers do not merit investment-grade rating, that is an indication of Verizon's potential exposure and reinforces the need for protections against credit risks. Indeed, the Commission Chairman himself has recognized that many telecommunications carriers overbuilt and overextended their debt in recent years.[19] However, he (and others in the industry) also recognizes that many of these carriers will ultimately fail or otherwise be restructured.[20] These carriers should not require Verizon and other suppliers to subsidize the risk of failure due to their bad business investments. And, as stated above, Verizon's tariffs are crafted so as to minimize the cash outlays from those companies that have financial difficulties, by providing an advance payment option or letter of credit in lieu of a cash deposit.

Opponents' arguments about the "unreasonableness" or "vagueness" of the other criteria are even more strained. For example, some carriers purport to challenge the triggers that clarify certain instances that will qualify as "history of late payment" – namely, those triggers that kick in if a customer's account balance has fallen in arrears in any two months out of any consecutive twelve-month period, or if the customer owes $250,000 or more to

---

[19] Michael K. Powell, Chairman, FCC, Remarks at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002) ("Corporate governance scandals, over-capacity, hyper-competition in some markets, a retrenchment of capital, continuing credit-rating downgrades, continued cuts in work force and capital expenditures and bankruptcies sadly characterize the day").

[20] *Id.* ("To address over-capacity, hyper-competition, weak pricing power and falling revenues, many sectors of the industry must undergo some prudent restructuring"); Scott C. Cleland, The Precursor Group, *Global Crossing's Bankruptcy: A Window Into a Broken System of Protecting Investors*, Testimony Before the House Committee on Financial Services Subcommittee on Oversight and Investigations, at 3 (Mar. 21, 2002) *available at* www.precursorgroup.com (noting that there's a "serious telecom debt spiral" and predicting that future bankruptcies will occur).

Verizon that is 30 days or more past due. AT&T Opp., at 28-29; Sprint Opp., at 5. However, these comments are ridiculous in light of the fact that Verizon indisputably can *already* use these criteria for requiring a security deposit under existing tariff conditions.[21] In addition, commenters oppose the request for adequate assurance under the bankruptcy code while simultaneously admitting that bankruptcy law *already allows* Verizon to request adequate assurance of payment from a bankrupt debtor.[22] Some commenters attempt to manufacture ambiguity in triggers that are specifically and objectively defined, even though other commenters seem to have had no trouble figuring out the meaning of these provisions.[23] One even spends pages criticizing Verizon's tariff as "unreasonable" based on its own misreading of Verizon's Direct Case.[24] The Commission should reject these patent attempts to create ambiguity where none exists.[25]

---

[21] *Verizon Telephone Companies Tariff FCC Nos. 1, 11, 14 and 16*, Transmittal No. 226, Reply comments of Verizon at 9-10 (filed Aug. 7, 2002).

[22] *See* Official Committee of Unsecured Creditors of WorldCom Opp., at 8 (arguing that the provision is "unnecessary, as Verizon already would be protected as a utility in a bankruptcy proceeding"). As Verizon stated in its Direct Case, the current tariff provisions are nonetheless needed, because a bankruptcy court often will let a carrier in the first instance set the amount and type of adequate assurance that will be required. Direct Case, at 9, n.14. Verizon also explained that this trigger does not conflict with bankruptcy law. *Id.*, Exhibit A, at A-23–A-25.

[23] For example, one commenter argues that the term "Nationally Recognized Statistical Ratings Organization" ("NRSRO") is vague. Sprint Opp., at 6. This accusation comes even though it is a term that is so well recognized that it is used in several Securities and Exchange Commission ("SEC") regulations, and even referred to in a Congressional statute. *See* Testimony of Isaac C. Hunt, Jr., SEC Commissioner, Before the Committee on Governmental Affairs, United States Senate (March 20, 2002), *available at* www.senate.gov/~gov_affairs/032002hunt.htm. As other opponents were readily able to understand, the term refers to companies that are specifically designated with NRSRO status by the SEC – currently Moody's Investors Service, Inc., Standard and Poor's Corporation, and Fitch Investors Service, Inc. *See, e.g.*, AT&T Opp., at 32; Sprint Opp., at 8; WorldCom Opp., at 8.

[24] Much of Time Warner's "unreasonableness" argument actually is based on its *erroneous* assertion that "Verizon states it would *not* deduct disputed amounts from amounts

In addition, the fact that most of the commenters in this proceeding have filed comments in related proceedings opposing *any* attempt by *any* ILEC to implement *any* provisions regarding adequate assurance against customer bad debt is strong evidence that it is not the provisions themselves, but rather the opponents, that are unreasonable. When Iowa Telecommunications and BellSouth proposed to use a variety of criteria to assess a customer's credit risk – even after BellSouth had worked with carrier-customers before filing the tariff to try to reach a compromise on acceptable criteria for determining creditworthiness – commenters opposed such tariff provisions as unreasonably vague.[26] In response to Verizon's proposed tariff, which sets forth clear, objective criteria, opponents reverse course and argue that the test is too "bright-line." AT&T Opp., at 28; Allegiance Opp., at 21. Attempts by other ILECs to amend their tariff provisions have been met with similar resistance.[27] In fact, according to the Washington state commission, WorldCom had in that proceeding "oppose[d]

---

billed for purposes of determining whether a carrier has complied with a deadline." Time Warner Opposition, at 9 (emphasis added). In fact, the page Time Warner cites from Verizon's Direct Case stated exactly the opposite – disputed amounts *are* deducted when Verizon determines whether a customer's payment is overdue. *See* Direct Case, Exhibit A, at A-19 ("Verizon does deduct disputed amounts from amounts billed for purposes of determining whether a carrier has complied with a deadline").

[25] *See, e.g., The Associated Press v. FCC*, 262 F.2d 1290, 1299 (D.C. Cir. 1971) ("[C]laimed ambiguities or doubts as to the meaning of a tariff must have a substantial basis in the light of the ordinary meaning of the words used and not a mere arguable basis") *quoting US v. Missouri-K.T. R.R.*, 194 F.2d 777, 778-79 (5th Cir. 1952).

[26] *See, e.g., Iowa Telecommunications Services, Inc. Tariff FCC No. 1, Transmittal No. 22*, WorldCom Petition to Reject at 2-5, 7-10 (filed July 10, 2002); *BellSouth Telecommunications Inc. Tariff FCC No. 1, Transmittal No. 657*, WorldCom Petition to Reject at 2-3, 8-13, AT&T Petition at 2-3, 6-9 (filed July 26, 2002); *BellSouth Telecommunications Inc. Tariff F.C.C. No. 1, Transmittal No. 657*, BellSouth Reply, at 2 (filed August 1, 2002) (stating that it worked with carriers toward a compromise on the criteria for determining creditworthiness).

[27] *See, e.g., National Exchange Carrier Association, Inc. Tariff FCC No. 5, Transmittal No. 951*, WC Docket No. 02-340, DA 02-2948, ¶ 6 (rel. Oct. 31, 2002);

having *any* rule on company-to-company deposits," and the commission interpreted AT&T's position to be the same. *See* WUTC Order, ¶ 25. In other words, it is clear that no matter what the criteria – and even despite the fact that it often is the *same* criteria that many of the opposing commenters candidly admit to having in their own tariffs – commenters will object to letting ILECs use the same measures for their own customers. However, it simply cannot be the case that there is *no* reasonable way for carriers to evaluate and protect against the risk of bad credit. The only anti-competitive and discriminatory behavior at issue here is that of the opponents. They want to be free to exercise these protections themselves when faced with customers with bad credit, but want to prevent ILECs from having some of the same abilities to reduce the cost of customer bad debt. This is something the Commission should not allow.

III. The Tariff Provisions Are Not "Exogenous Adjustments," and Verizon's Rate of Return Is Irrelevant to the Issue of Whether the Provisions Are Reasonable

Rather than focus on the reasonableness of the tariff provisions themselves, several commenters throw out a number of red herrings that have little or nothing to do with the issues at hand. Although the level of uncollectibles is at a historic high – and is, in fact, significant enough to warrant an exogenous adjustment to access rates – Verizon does not have any "burden" to prove that is the case in order to amend its tariff provisions regarding adequate assurance of payment. The test is simply whether the tariff provisions are "reasonable." 47 U.S.C. § 201(b). Verizon does not have to prove that uncollectibles will continue to climb indefinitely, that it is entitled to an exogenous adjustment to rates, or any other imaginary hurdles that commenters attempt to put forth. As Verizon has shown in prior filings, the tariff provisions are reasonable, just, and nondiscriminatory. Direct Case,

---

Ameritech Operating Companies Tariff FCC No. 2, et al., Transmittal Nos. 1312 et al., DA 02-2039, ¶ 5 (rel. Aug. 16, 2002).

Exhibit A at A-1-A-5. That should be the beginning – and end – of the Commission's inquiry. Moreover, opponents' arguments about price caps and rates of return are wrong on their own terms.

Contrary to the arguments of a couple of commenters, Verizon's proposed tariff provisions are not essentially an exogenous rate adjustment. *See* Sprint Opp., at 14; AT&T Opp., at 21-22. On the contrary, the tariff revisions at issue here do not propose to change any rates. Rather, they are simply measures designed to ensure that customers that present objective signs that they may not pay for services ordered will provide "adequate assurance" of payment before Verizon is required to furnish those services. The principle of "adequate assurance" is one that is well accepted in both contract and bankruptcy law, and is implied in many contracts as a matter of law.[28] It does nothing to affect customers' rates, and indeed will have no effect on customers that do not exhibit objective signs that they may be unwilling or unable to pay for services.[29]

Verizon also is not asking for "special" protection against uncollectibles, AT&T Opp., at 26, but is merely asking for the same types of protections available to other carriers and in

---

[28] *See, e.g.*, 11 U.S.C. § 366(b) (A "utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date"); Restatement (Second) of Contracts § 251 ("Where reasonable grounds arise to believe that the obligor will commit a breach by non-performance that would of itself give the obligee a claim for damages for total breach . . ., the obligee may demand adequate assurance of due performance and may, if reasonable, suspend any performance for which he has not already received the agreed exchange until he receives such assurance"); UCC § 2-609(1) ("When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return").

[29] Indeed, the Commission's accounting rules recognize that deposits are treated like other company "*liabilities*" and are *deducted* from the interstate rate base, or average net investment as reported in ARMIS. 47 CFR § 65.830(a).

other industries. To the contrary, it is the *opponents* to the tariff provisions who are asking for special treatment. They are arguing that Verizon should be required to subsidize their services and their financial risk, by giving them an unsecured line of credit (in the form of services ordered), without any assurance of payment in return. In a non-regulated industry, no reasonable service provider would provide services to a customer that has presented objective signs that it may be unable (or unwilling) to pay for those services, and Verizon should not be forced to do so. Indeed, even the federal government (including the Commission) recently has taken procedures designed to mitigate a "rising tide of delinquent debts."[30]

In addition, the tariff provisions at issue here do not impose the risk of bad debt problems of one customer onto other customers.[31] Indeed, even a superficial analysis of that argument shows it to be patently absurd. If Verizon requires a security deposit, advance payment, or letter of credit from Customer A, that only serves as some measure of protection against nonpayment by Customer A. And that actually helps to ensure that Verizon and its other customers do not end up bearing the cost of Customer A's failure to pay.

The historic level of the current industry turmoil is a fact widely recognized in the industry, and commenters' attempts to downplay or minimize that fact are as inconsistent as they are unconvincing. Indeed, the Commission just last week referenced the negative economic conditions that the industry is "currently weathering," and noted that because telecommunications companies are "extraordinarily interdependent" the failure of individual

---

[30] *Amendment of Part 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, FCC 02-299, ¶ 2 (rel. Nov. 15, 2002).

[31] *See* Allegiance Opp., at 8 (accusing Verizon of insisting "that its entire customer base should be forced to act as guarantors of the payments that Verizon may be owed by individual carriers").

companies is very likely to negatively affect other companies in the industry, more than it would in other industries.[32] As most industry analysts recognize, the product of current bankruptcies is only likely to be more bankruptcies and financial turmoil.[33]

Even if commenters somehow could predict with certainty when the current industry turmoil would end, that would not be a reason to deny these tariffs. Commenters have pointed out that the trend in uncollectibles is cyclical, and that customer bad debt is a constant factor in this (or any) industry. AT&T Opp., at 5, 21-22; Sprint Opp., at 16. Because they are forced to operate under the terms of decades-old tariff provisions, Verizon and the other ILECs were not fully prepared to respond adequately to the current industry turmoil. And when they attempted to respond by updating their tariffs to give them more adequate measures to address customer bad debt, their tariffs were suspended for months, further hindering the ability to respond promptly to the current crisis. Failing to allow the tariff provisions to take effect now will similarly hamper these companies from responding to future crises.

---

[32] *Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35*, Order and Order on Reconsideration, WT Docket No. 02-276, FCC 02-311, ¶ 10 (rel. Nov. 14, 2002) ("We have recognized that the telecommunications sector is currently weathering economic conditions that threaten negative effects for consumers. . . . Firms in the telecommunications industry are extraordinarily interdependent, which means that problems with individual companies have a greater negative effect on other telecommunications companies relative to other industry sectors").

[33] *See, e.g., Experts See Wi-Fi and 3G Data Markets Coexisting*, Communications Daily (Oct. 17, 2002) (Roger McNamee, Integrated Capital Partners: "Industry could face multiple cycles of bankruptcies as service providers emerge from bankruptcy with substantially less debt and engage in aggressive price war"); *Review of the Section 251 Unbundling Obligations of ILECs*, CC Docket No. 01-338, Comments of WorldCom at 23 (filed Apr. 4, 2002) ("firms that are able to emerge from bankruptcy will be better able to compete, having been relieved of their heavy debt burdens"); *Panel Debates Whether Bankruptcy Gives WorldCom Unfair Advantage*, Communications Daily (Oct. 17, 2002) (Janice Avne, Onvoy: "carrier, about to emerge from bankruptcy, plans to undercut AT&T's [wholesale] rate by 52%").

Some commenters argue that the rising uncollectibles "must be considered a business risk that should be absorbed by price cap companies," or that Verizon and other LECs should be required to subsidize other carriers as long as they are making a profit according to ARMIS rate of return figures. *See* Sprint Opp., at 13; AT&T Opp., at 7. However, the whole point of price caps is to encourage carriers to find ways to reduce costs and to become more efficient. It is not to force carriers to bear the costs of *other* companies' failed business plans. Yet that is precisely what the commenters would have the Commission do.[34]

It would be perverse – and directly contrary to the entire goal of the price cap system – if the Commission were to *penalize* carriers for making reasonable attempts to control costs, by ordering that any attempts to control costs would result in an offsetting downward rate adjustment. The tariff provisions must be examined on their own terms, and whether they are "reasonable" has nothing to do with price cap or rate of return issues.

IV. The Provisions Regarding Notice and Refunds of Deposits Are Reasonable

For the reasons stated in Verizon's Direct Case, the provisions regarding the notice period and refunds of deposit are reasonable and should be allowed to take effect. Direct Case, at 20-25. For example, the refund provisions were designed to mirror the provisions in existing tariffs. *Id.*, at 24-25. Because they are analogous to provisions the Commission has already approved as reasonable,[35] they are per se reasonable as well.

---

[34] Moreover, as Verizon demonstrated in its Direct Case, the levels of uncollectible cost carriers are experiencing now are *far* higher than those reflected in price cap rates, and are at a level that warrant an exogenous *upward* adjustment to Verizon's access rates. Direct Case, at 12-16 and Exhibit A-1.

[35] *See Investigation of Access and Divestiture-Related Tariffs*, 97 FCC 2d 1082, Appendix D, at discussion of Section 2.4.1(A) (1984) ("[W]e conclude that this [refund] provision should state that the telco will return or credit such a deposit to the customer's account after that customer has established a one-year prompt payment record").

Some commenters misstate the nature of the notice periods, implying that Verizon would be able to terminate service or require a security deposit only a few days after it has issued its bills. *See* AT&T Opp., at 39; Sprint Opp., at 17. These comments ignore the fact that the notice periods kick in only *after* other time has gone by – in particular, *after* the customer has had the standard time to review and pay its bills. These notice periods are in addition to, not instead of, current periods already built into the tariffs, and are more than reasonable to protect customers' interests. Direct Case, at 21.[36] And, as Verizon pointed out in its Direct Case, *billing* in advance is not the same as being *paid* in advance. *Id.*, at Exhibit A, A-21. Thus, contrary to these commenters' arguments, the growth in advance billings does not eliminate the need for these tariff revisions.

Commenters' criticisms about the timeliness and accuracy of Verizon's bills, and the adequacy of its dispute resolution procedures, also are misplaced. Verizon must demonstrate that it has "complete, accurate, and timely wholesale bills" in order to obtain 271 status.[37] The opposition comments regarding Verizon's billing are the same type that the Commission has considered – and rejected – in various 271 proceedings. *See, e.g., id.*, ¶¶ 38-48. In addition, Verizon must satisfy state performance metrics regarding billing and dispute resolution procedures. *Id.,* ¶ 49. The Commission recently found that "Verizon demonstrates that it responds to current billing disputes in a timely manner." *Id.* Moreover, as Verizon has

---

[36] Although Mpower complains that the current 30-day billing cycle allows it limited time to review the bill "[g]iven the time necessary to obtain and mail a check plus the time required for mailing, delivery and processing by Verizon," Mpower Opp., at 6, it is Mpower's choice to receive paper, rather than electronic copies, of its bills, and to pay by check rather than electronically. If Mpower wants more time to review its bills, it can switch to electronic bills, which are delivered more quickly. *See* Direct Case, Exhibit A at A-17.

[37] *Application by Verizon Virginia, Inc., et al., for Authorization to Provide In-Region InterLATA Services in Virginia*, WC Docket No. 02-214, FCC 02-297, ¶ 38 (rel. Oct. 30, 2002).

explained before, the current tariffs provide specific mechanisms for resolution of billing disputes that would apply to the current tariff provisions. *See* Verizon Tariff Reply, at 18-19.

Conclusion

The Commission should permit Verizon's tariffs to become effective.

Respectfully submitted,

A Rakestraw

Ann H. Rakestraw

Michael E. Glover
Edward Shakin
Of Counsel

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3174

November 19, 2002

Attorney for the
Verizon telephone companies